



Agenda Date: 8/28/00
Agenda Item: IV-E

STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102

CABLE TELEVISION

IN THE MATTER OF THE PETITION OF)
CABLEVISION OF NEWARK FOR RENEWAL)
OF A CERTIFICATE OF APPROVAL TO)
CONTINUE TO OPERATE AND MAINTAIN A)
CABLE TELEVISION SYSTEM IN THE CITY)
OF NEWARK, COUNTY OF ESSEX, STATE)
OF NEW JERSEY)

RENEWAL
CERTIFICATE OF APPROVAL

DOCKET NO. CE98060351

Schenck, Price, Smith & King, Morristown, New Jersey, by Sidney A. Sayovitz, Esq., for the Petitioner.

City Clerk, City of Newark, New Jersey, by Robert P. Marasco, for the City.

BY THE BOARD:

On July 23, 1981, the Board granted Connection Cable Communications Corporation ("Connection"), a Certificate of Approval in Docket No. 8011C-6732 for the construction, operation and maintenance of a cable television system in the City of Newark ("City"). On November 13, 1986, the Board approved the transfer of the Certificate from Connection to Gilbert Media, Inc. d/b/a Gateway Cable, Inc. ("Gateway") in Docket No. CM86101039. On February 28, 1992, the Board approved the transfer of the Certificate of Approval from Gateway to Cablevision of Newark, Inc. ("Petitioner") in Docket No. CM91111762. The Petitioner's Certificate expired on July 28, 1996, however, it is authorized to continue to provide cable television service to the City pursuant to N.J.S.A. 48:5A-25.

The Petitioner filed an application for the renewal of its municipal consent with the City on or about November 29, 1995, pursuant to N.J.S.A. 48:5A-23 and N.J.A.C. 14:18-13. The City, after public hearing, adopted an ordinance on January 21, 1998, granting municipal consent to the Petitioner. The Petitioner did not accept the ordinance.

On June 4, 1998, the Petitioner, pursuant to N.J.S.A. 48:5A-17(d), filed with the Board for a renewal of its Certificate of Approval for the City. The Petitioner alleged that the City ordinance did not constitute an appropriate municipal consent and in doing so, the City was arbitrary, capricious and its decision was unsupported by the record.

Discussions took place between the parties that culminated in settlement that resolved the matter. Pursuant to those discussions, the City adopted an ordinance granting renewal of its municipal consent on December 29, 1998. On January 12, 1999, the Petitioner accepted the terms and conditions of the ordinance, in accordance with N.J.S.A. 48:5A-24. Thereafter, on March 19, 1999, the Petitioner filed an amended petition with the Board.

The Board has reviewed the application for municipal consent, the petition and amended petition for a Renewal Certificate of Approval, the municipal consent ordinance, and the amended municipal consent ordinance. Based upon this review and the recommendation of the Office of Cable Television, the Board HEREBY FINDS the following:

1. The Petitioner possesses the requisite legal, character, financial and technical qualifications for the awarding of a Certificate of Approval. Further, these qualifications were reviewed by the City in conjunction with the municipal consent process. See N.J.S.A. 48:5A-22 to 29 and N.J.A.C. 14:18-13.
2. The design and technical specifications of the system will ensure the Petitioner provides safe, adequate and proper service.
3. The Petitioner has represented that all previously required construction within the franchise territory is complete.
4. The franchise period as stated in the ordinance is ten years. The Office of Cable Television finds this term to be of reasonable duration.
5. The Petitioner's rates shall be regulated and tariffs shall be filed for all services, in accordance with the rules and regulations of the Federal Communications Commission, the Board and the Office of Cable Television. The Petitioner shall maintain informational tariffs for unregulated service rates, and promptly file any revisions thereto.
6. Pursuant to N.J.S.A. 48:5A-26(a), the ordinance specifies a complaint officer. In this case, it is the Office of the City Clerk. All complaints shall be received and processed in accordance with N.J.A.C. 14:17-6.5.
7. Pursuant to the ordinance during the renewal term, the Petitioner shall maintain a local office or agent within the City to receive, investigate and resolve any problems, pursuant to N.J.S.A. 48:5A-26(d). The Petitioner's local business office is currently located at 360 Central Avenue in the City.
8. The franchise fee to be paid to the City is specified to be 2% of the Petitioner's gross revenues from all recurring charges in the nature of subscription fees paid by subscribers for its cable television reception service in the City. Additional regulatory fees shall be paid to the State in an amount not to exceed 2% of Petitioner's gross operating revenues derived from intrastate operations. The Board finds these fees to be reasonable.
9. The Petitioner shall provide service to any person's residence located in all areas of the franchise territory, at tariffed rates for standard or non-standard installation. Any commercial areas requesting service shall be installed at commercial installation rates.
10. No later than three years from the issuance of this Renewal Certificate of Approval, the Petitioner shall complete a rebuild of the system to a minimum capacity of 750 MHz, which shall provide a minimum capability of 77 analog channels within the City.
11. The Petitioner shall provide the City with an institutional network ("I-Net") pursuant to the ordinance. In conjunction with and simultaneous to the subscriber network rebuild, the

Petitioner will install six dark fibers connecting a central location to a total of 55 locations, as specified by the City. The fibers from each site will connect to the central location. Two of the fibers at each site will be dedicated for the City's exclusive use. The Petitioner may utilize the remaining four fibers running to each site, until the City provides a reasonable written notice that it wishes to utilize the additional fibers at any particular location. The I-Net will be able to support two-way video, data and voice communications between designated buildings, distance learning applications, and transmission of public, educational and governmental ("PEG") access programming from origination points on the I-Net to the subscriber network.

12. The Petitioner shall purchase and convey title to the City of \$280,000.00 worth of I-Net transmission equipment. The purpose of this equipment will be to activate the transmission capability of the I-Net.
13. In accordance with the application and the ordinance, the Petitioner shall provide PEG access facilities and technical support. The Petitioner shall establish an outreach and training program in connection with public access. The Petitioner shall establish a program to train City personnel in the use of video production equipment and technical skills.
14. Prior to the completion of the rebuild and upon request of the City, the Petitioner shall provide four PEG channels. Prior to the rebuild, public and government access may share a single channel. However, if the shared channel reaches the maximum capacity of utilization, as put forth in the ordinance, and then the City may request that the fourth channel be made immediately available as the government access channel. Upon completion of the rebuild, the Petitioner shall provide one channel each for local origination, public access, government access and educational access. When the cable system begins to carry digitally transmitted video channels, the Petitioner shall make available additional digital PEG channels.
15. The Petitioner shall provide \$250,000.00 for studio equipment for the City-owned studio to be located in Symphony Hall. The City will utilize these funds and the \$1.8 million the City has previously earmarked to renovate the Symphony Hall location and to equip it for use as a government access studio. Each year after year four of the franchise that the government channel produces at least an average of 20 hours per week of original programming, the Petitioner shall provide an additional \$200,000.00 per year, adjusted according to the CPI from the start date of the franchise, for additional government access capital equipment. The additional monies shall be provided contingent upon the City demonstrating that it has expended the initial \$2.05 million, plus accrued interest, for studio renovations and equipment.
16. Within six to twelve months after the issuance of the Certificate of Approval by the Board, the Petitioner shall commence construction of a "sound-proof" local origination/public access studio at 360 Central Avenue or other location in the City. The studio will be available to public access users on a priority basis over other uses of the studio. Pursuant to the City's ordinance, the Petitioner shall earmark \$200,000.00 per year in its budget to administer public access. In addition, the Petitioner shall carry weekly on the local origination channel at least one thirty-minute weekly program providing information and covering the activities of the City. The Petitioner, or any other entity administering public access, shall report to the City's Cable Public Access Advisory Board.

17. The Petitioner shall provide an annual report with the City regarding its compliance with the municipal consent ordinance. The report shall be filed on the anniversary date of the adoption of the City's ordinance.
18. Pursuant to the ordinance, the City has reserved the right to evaluate the quality of the Petitioner's service, on an annual basis. If the City determines at any time that the Petitioner is in violation of the terms of the agreement, the City shall provide the Petitioner with notice and opportunity to cure the violation. If the City determines that the Petitioner has not met its commitments, the City shall forward its findings to the Board for appropriate action.
19. Pursuant to N.J.S.A. 48:5A-28(d), the Petitioner shall provide a performance bond in the amount of \$25,000.00 for the life of the franchise. During the period of construction, the Petitioner shall provide an additional amount in the sum total of \$2.4 million for the performance bond.

It is noted that the City's ordinance contains a provision which is approved herein. Specifically, the ordinance at Section 10(a) Performance Bond sets forth that the Petitioner shall increase the amount of the performance bond from \$25,000.00 to \$2.4 million during the period of the system rebuild. The Cable Television Act requires that, within its application for renewal municipal consent, the Petitioner must include evidence of a commitment for a performance bond in an amount of not less than \$25,000.00, pursuant to N.J.S.A. 48:5A-28(d). Although the municipality must approve the amount, the sufficiency and reasonableness of the performance bond is subject to review by the Office of Cable Television and approval by the Board. The purpose of this performance bond is to ensure all undertakings as promised in the municipal consent application and the ordinance.

As noted above, the City, within its ordinance, requested a \$2.4 million performance bond during the system rebuild, which is to be reduced to \$25,000.00 upon completion of the system rebuild. It is also noted that the Petitioner has agreed to the higher performance bond. The Office of Cable Television has reviewed the increase in performance bond for sufficiency and reasonableness, pursuant to N.J.S.A. 48:5A-28(d), and has recommended that the Board approve the provision. Therefore, the Board HEREBY FINDS the amounts to be reasonable, that the parties agreed to the higher amount and that the Office of Cable Television has reviewed the matter and recommends approval. Accordingly, the Board HEREBY APPROVES the request for a performance bond of \$2.4 million which shall be reduced to \$25,000.00 upon completion of the system rebuild within the City. Upon completion of construction, the Petitioner shall seek certification from the City that all work has been performed to its satisfaction. The Petitioner may then apply to the Office of Cable Television for reduction of the performance bond to the statutory minimum of \$25,000.00, which application shall contain a confirmation from the Petitioner that all required work has been completed.

Based upon these findings, the Board HEREBY CONCLUDES that pursuant to N.J.S.A. 48:5A-17(a) and 28(c), the Petitioner has sufficient financial and technical capacity and meets the legal, character and other qualifications necessary to construct, maintain and operate the necessary installations, lines and equipment and is capable of providing the proposed service in a safe, adequate and proper manner.

Therefore, the Petitioner is HEREBY ISSUED this Renewal Certificate of Approval as evidence of Petitioner's authority to construct and operate a cable television system within the entirety of the City.

This Certificate is subject to all applicable State and federal laws, the rules and regulations of the Office of Cable Television, and any such lawful terms, conditions, and limitations as currently exist or may hereafter be attached to the exercise of the privileges granted herein.

The Petitioner shall adhere to the operating standards set forth by the Federal Communications Commission's rules and regulations, 47 C.F.R. Section 76.1 et seq. Any modifications to the provisions thereof shall be incorporated into this Certificate. Additionally and more specifically, the Petitioner shall adhere to the technical standards of 47 C.F.R. Part 76, Subpart K.

Failure to comply with all applicable laws, rules, regulations and orders of the Board or Office of Cable Television and/or the terms, conditions, and limitations set forth herein may constitute sufficient grounds for the suspension or revocation of this Certificate.

This Renewal Certificate is issued on the representation that the statements contained in the Petitioner's applications are true, and the undertakings therein contained shall be adhered to and enforceable unless specific waiver is granted by the Office of Cable Television pursuant to the authority contained in N.J.S.A. 48:5A-1 et seq.

This Certificate shall expire July 28, 2006.

DATED: August 29, 2000

BOARD OF PUBLIC UTILITIES
BY:

(signed)

HERBERT H. TATE
PRESIDENT

(signed)

CARMEN J. ARMENTI
COMMISSIONER

(signed)

FREDERICK F. BUTLER
COMMISSIONER

ATTEST:

(signed)

FRANCES L. SMITH
BOARD SECRETARY